

Trial Section Merits Panel
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THIS OPINION WAS NOT WRITTEN FOR PUBLICATION
and is not binding precedent of the Board.

Paper No. 55

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

WILLIAM D. HUSE, LUTZ RIECHMAN, GREGORY WINTER,
JOSEPH SORGE, and RICHARD A. LERNER
(07/933,958 and 07/933,959),

Junior Party,

v.

GREGORY P. WINTER, ELIZABETH S. WARD,
and DETLEF GUSSOW
(08/332,046),

Senior Party.

Interference No. 104,271

Before SCHAFER, LEE, and TORCZON, Administrative Patent Judges.

TORCZON, Administrative Patent Judge.

JUDGMENT

(PURSUANT TO 37 CFR § 1.662(a))

INTRODUCTION

Senior party Winter requests adverse judgment (Paper No. 51). Junior party Huse requests a statement in the

judgment stating that the status of its non-corresponding claims is not affected by this judgment (Paper No. 52.)

DISCUSSION

A final decision awards judgment based on a count. 37 CFR § 1.658(a). A claim designated as corresponding to a count is involved in the interference. 37 CFR § 1.601(f). Conversely, a claim not designated as corresponding is not involved in the interference. Even if claims might have been properly designated as corresponding, they are not involved for the purposes of judgment until they are designated as corresponding. In the present interference, the question is moot for two reasons. First, there is no motion to designate claims as corresponding to the count. See 37 CFR § 1.633(c). Second, judgment against Winter renders the question of whether some of Huse's claims should have been involved academic. (Note that it would not be academic if Winter's claims were at issue.) Either way, Huse's claims--whether corresponding or not--survive this interference intact. Winter's claims not corresponding to the count also survive intact.

ORDER

Upon consideration of the record of this interference, it
is

ORDERED that judgment on priority as to Count I is
awarded against senior party Winter;

FURTHER ORDERED that senior party Winter is not entitled
to a patent containing claims 33-37, 39-48, 50-52, and 57-66
of Winter's 046 application, which correspond to count 1;

FURTHER ORDERED that, based on the record before us,
junior party Huse is entitled to a patent containing
claims 16-21, 23-25, 28, 29, 31-35, 37-39, 42-51, 54-60, 62-
70, and 72-80 of Huse's '958 application, which correspond to
count 1;

FURTHER ORDERED that, based on the record before us,
junior party Huse is entitled to a patent containing claims 7-
11, 13-15, 17-22, 24-26, 28-31, 33-35, 37-41, 43-45, 47-50,
52-57, 59 and 60 of Huse's '959 application, which correspond
to count 1.

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RICHARD E. SCHAFER
Administrative Patent Judge

JAMESON LEE
Administrative Patent Judge

RICHARD TORCZON
Administrative Patent Judge

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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Board of Patent Appeals and Interferences
Interference Trial Section

1 October 2001 - 10.35

TO: Yolunda R. Townes
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FROM: Richard Torczon

INTERFERENCE NO. 104,271

9 Please review the attachment and, if no corrections are necessary, please circulate as indicated.

9 If corrections are necessary, please mark the attachment accordingly and return it to me.

Thank you for your assistance in this matter.

Attachment

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